HAJI AWALLUDIN BIN ANIDIN

v.

MAJLIS PERBANDARAN KUANTAN

SUPREME COURT, KUANTAN
TAN SRI DATO' HJ. ANUAR BIN DATO' HJ. ZAINAL ABIDIN CJ (MALAYA)
DATO' PEH SWEE CHIN FCJ
DATO' WAN ADNAN BIN ISMAIL FCJ
[CIVIL APPEAL NO. 04-11 OF 1993]
8 JUNE 1995

LOCAL GOVERNMENT: *Errant ratepayers - Warrant of attachment of property - Ownership of property - Whether irrelevant - Local Authority removing property of occupier - Due compliance with statutory requirements - Whether there could be any trespass - Local Government Act 1976 ss. 146, 148.*

This was an appeal against the judgment of the learned Judge who dismissed the appellant's claim for damages for trespass. The facts were that in 1988 the appellant bought a property known as No. A57, Lorong Lengkok Kiri 3, Taman Tanah Putih Baru, Kuantan (the said premises) from one Chua Ong Kiat (Chua). The appellant did not submit to the respondent the required notice of transfer of the said premises as required by s. 160 of the Local Government Act 1976 (the Act), but had nevertheless gone into occupation of the premises. On 26 April 1989 the respondent issued the notice in Form E pursuant to s. 148 of the Act, requiring Chua, as the owner on record, to pay arrears of assessment in respect of the said premises. No payment was received within the stipulated time, and that being the case, a warrant of attachment in Form F was issued by the defendant, also pursuant to s. 148. The warrant was executed and a cassette recorder and a television set belonging to the appellant were removed from the said premises. The appellant did not dispute as to the alleged arrears of rent but argued that he was not liable to pay those arrears, and therefore, the seizure of the goods must amount to a trespass.

Held:

Per Wan Adnan Ismail FCJ (delivering the judgment of the Court):

[1] In the instant case, under s. 148 what may be seized under the warrant are, firstly, movable property belonging to the owner or occupier liable to pay the same which is found anywhere within the area of Majlis Perbandaran Kuantan, and, secondly, movable property which is found in the said premises to whomsoever belonging.

[2] It is clear from s. 148 that any movable property found in the premises in respect of which the arrears of assessment are due is liable to seizure. The question of ownership of such movable property is immaterial at this stage. Thus, any movable property even belonging to a tenant or a lodger in any such premises will also be liable to seizure.

[3] The defendant, in acting the way it did, had fully complied with the provisions of s. 148. The seizure of the goods was not unlawful, and that being so, there could not be any trespass.

[Appeal dismissed].

*[**Bahasa Malaysia** Translation of Headnotes]*

KERAJAAN TEMPATAN: *Pembayar cukai kadaran yang ingkar - Waran penyitaan hartanah - Keempunyaan hartanah - Samada tak relevan - Pihak Berkuasa Tempatan memindahkan harta penghuni - Pematuhan yang wajar terhadap kehendak-kehendak berkanun - Samada terdapatnya sebarang pencerobohan - Akta Kerajaan Tempatan 1976 ss. 146, 148*

Ini merupakan satu rayuan terhadap penghakiman Hakim yang bijaksana yang telah menolak tuntutan perayu untuk gantirugi atas pencerobohan. Fakta-faktanya adalah bahawa dalam tahun 1988, perayu telah membeli sebuah hartanah yang dikenali sebagai No. A57, Lorong Lengkok Kiri 3, Taman Tanah Putih Baru, Kuantan (premis tersebut) daripada seorang yang bernama Chua Ong Kiat (Chua). Perayu telah tidak mengemukakan kepada responden notis pindahmilik yang diperlukan bagi premis tersebut sepertimana yang dikehendaki oleh s. 160 Akta Kerajaan Tempatan 1976 (Akta tersebut) tetapi namun begitu telah menghuni premis tersebut. Pada 26 April 1989 defendan telah mengeluarkan notis dalam Borang E selaras dengan s. 148 Akta tersebut, yang menghendaki Chua, sebagai tuanpunya menurut rekod, membayar tunggakan taksiran berhubung dengan premis tersebut. Tiada pembayaran yang diterima dalam tempoh yang telah ditetapkan, dan dalam keadaan yang sedemikian, satu waran penyitaan dalarn Borang F telah dikeluarkan oleh defendan, juga selaras dengan s. 148. Waran tersebut telah disempurnakan dan sebuah kaset perakam serta sebuah televisyen kepunyaan perayu telah dikeluarkan daripada premis tersebut. Perayu tersebut telah tidak mempertikaikan berhubung dengan tunggakan-tunggakan sewaan yang dikatakan tetapi berhujah bahawa beliau tidak bertanggungjawab untuk membayar tunggakan-tunggakan itu, dan dengan itu, penyitaan barangan tersebut tentulah membawa kepada suatu pencerobohan.

Diputuskan:

Oleh Wan Adnan Ismail HMP (menyampaikan penghakiman Mahkamah):

[1] Dalam kes semasa ini, di bawah s. 148 apa yang boleh disita di bawah waran tersebut adalah, pertamanya, harta-harta boleh alih kepunyaan tuanpunya atau penghuni tersebut yang bertanggungan untuk membayarnya yang mana terdapat dalam lingkungan Majlis Perbandaran Kuantan, dan keduanya, harta-harta boleh alih yang terdapat di dalam premis tersebut kepada siapa pun ianya menjadi milikan.

[2] Ianya jelas daripada s. 148 bahawa mana-mana harta boleh alih yang terdapat dalam premis yang berkaitan dengan yang mana tunggakan-tunggakan taksiran tersebut kena dibayar adalah boleh disita. Persoalan keempunyaan harta boleh alih yang sedemikian tidak penting di peringkat ini. Dengan itu, apa-apa harta boleh alih walaupun kepunyaan seorang penyewa atau seorang yang menumpang dalam mana-mana premis yang sedemikian akan juga menjadi boleh disita.

[3] Defendan tersebut, dalam bertindak sepertimana yang ia lakukan itu, telah mematuhi sepenuhnya peruntukan-peruntukan s. 148. Penyitaan barangan tersebut adalah tidak salah di sisi undang-undang, dan oleh yang sedemikian, tidak berlaku apa-apa pencerobohan.

[Rayuan ditolak].

Case referred to:
Dewan Bandaraya Kuala Lumpur v. Suppiah s/o Govindasamy [1991] 1 CLJ 429 ***(dist)***

Legislation referred to:
Subordinate Court Rules O. 26A
Local Government Act 1976 s. 146, 148, 154, 160

For the plaintiff/appellant - Mura Raju; M/s. Mura Raju & Co.
For the defendant/respondent - Jaya Ramachandran; M/s. Balendran Chong Bodi & Khatijah

JUDGMENT

Wan Adnan Ismail FCJ:

The plaintiff's claim against the defendant is for damages for trespass alleged to have been committed by the defendant's servants or agents on 27 May 1989 in removing from the premises No. 57, Lorong Lengkok Kiri 3, Taman Tanah Putih Baru, Kuantan (the said premises) one Sanyo Cassette Recorder and one Sanyo 24-inch television set belonging to the plaintiff (the said goods).

The learned Sessions Court Judge allowed the plaintiff's claim on the plaintiff's application under O. 26A of the Subordinate Court Rules. However, the learned Judge at Kuantan High Court on an appeal by the defendant set aside the Sessions Judge's order; hence the appeal to us. We heard the plaintiff's appeal against the learned Judge's decision and we dismissed it. We now give our reasons.

The facts are not in dispute.

On 26 April 1989, the defendant issued the notice in Form E pursuant to s. 148 of the Local Government Act, 1976 (the Act) to one Chua Ong Kiat, being the owner on record of the said premises, requiring payment of arrears of assessment due in respect of the said premises and giving him 15 days within which to pay up. The notice was sent to the address of No. A-4894, Galing Kecil, 25250 Kuantan, being the address of the said owner still on the defendant's record. Since no payment was received within the stipulated time, the defendant pursuant to the power under s. 148 of the Act issued a warrant of attachment in Form F for its execution to its officer, Mohd. Saat bin Abdul. Accordingly on 26 May 1989 the officials of the defendant went to the said premises. They met the plaintiff, the occupier of the said premises. The Plaintiff told them that he had bought the said premises from Chua Ong Kiat and requested them to see the solicitors, M/s. Bahari, Choy & Nongchik, who had handled the sale transaction. Hence, on the morning of 27 May 1989 the officials checked with the solicitors and were informed that the said premises were sold to the plaintiff on 14 November 1988 and that Form I had not yet been lodged with the defendant. As the plaintiff refused to discuss the matter further with the defendant, the officials of the defendant proceeded with the attachment.

On 29 May 1989 the said Chua Ong Kiat paid to the defendant the arrears amounting to RM2,195.27. On 2 June 1989 the said goods were brought back to the said premises but the plaintiff's wife refused to accept them. The plaintiff accepted them on 10 June 1989.

It was only on 2 June 1989 that the defendant received Form 1 pursuant to s. 160 of the Act, being a notice of transfer of a rateable holding.

Sections 146 and 148 of the Act provide as follows:

146. Rates to be first charge.

All rates shall be paid by the persons who are the owners of the holdings for the time being, and until so paid shall, subject to the provisions of the National Land Code, be a first charge on the holdings in respect of which they are assessed, and if not paid within the prescribed time, shall be recoverable in the manner hereinafter prescribed.

148. Proceedings for recovery of an arrear.

(1) For the recovery of an arrear the local authority may issue a warrant of attachment in Form F of the First Schedule hereto and may seize by virtue thereof any movable property, belonging to the owner or occupier liable to pay the same, which is found within the local authority area and may also seize any movable property, to whomsoever belonging, which is found on the holding in respect of which the arrear is due:

Provided that no warrant of attachment shall be issued by the local authority unless it has served a notice, in Form E of the First Schedule hereto, posted or delivered to the owner or any one of the owners, if more than one, at the last known address, calling on him to pay the arrear within fifteen days of the posting or delivery.

(2) The warrant shall be executed by an officer of the local authority who shall make an inventory of the property attached thereunder, and shall at the same time give notice in Form G of the First Schedule hereto, to the person in possession of the property at the time of attachment:

Provided that where in the opinion of the officer executing the warrant the value of the movable property to be attached is of a lesser value than the arrear to be recovered or there is no movable property to be attached as in the case of a holding which is vacant or unoccupied no such inventory need be made and in such a case he shall affix a notice in Form H of the First Schedule hereto on some conspicuous part of the holding or any one of the holdings in respect of which the arrear is due to the effect that procedure for the recovery shall be instituted under s. 151.

(3) Such officer may break open in the daytime any house or building for the purpose of effecting such attachment.

(4) The fee for a warrant of attachment shall be of such amount as the local authority may fix from time to time and shall be costs of the attachment.

It is not disputed that there were arrears of the assessment in respect of the said premises as at 26 April 1989. As at that date, the owner of the said premises on the defendant's record was one Chua Ong Kiat of No. A-4894 Galing Kecil, Kuantan. Therefore it was proper for the defendant to issue the notice in Form E to him. Since no payment was received within the stipulated time of 15 days it was again proper for the defendant to issue the warrant of attachment in Form F. The relevent part of the Form reads as follows:

This is to command you to attach **the movable property of the said owner/occupier wherever the same may be found within the said Majlis Perbandaran Kuantan and also any movable property to whomsoever belonging which is found on the holding 57, Lorong Lengkok Kiri 3,** Taman Tanah Putih Baru, 25150 Kuantan and unless the said sum ... (emphasis added).

These words follow the wordings of s. 148. What may be seized under the warrant are:

(i) movable property **belonging** to the owner or occupier liable to pay the same which **is found anywhere within the area of Majlis Perbandaran Kuantan**; and

(ii) movable property which is **found in the said premises to whomsoever belonging**.

Whereas under (i) the movable property liable to seizure must belong to the owner or occupier liable to pay the arrear, the seizable movable property found in the said premises need not belong to the owner or occupier.

It is clear from s. 148 that any movable property found in the premises in respect of which arrears of assessment are due is liable to seizure. The question of ownership of such movable property is immaterial at this stage. Thus, any movable property even belonging to a tenant or a lodger in any such premises will also be liable to seizure.

The plaintiff contended that he was not liable to pay the arrears. Therefore the seizure of the said goods amounted to a trespass. The learned Counsel relied solely on the case of *Dewan Bandaraya Kuala Lumpur v. Suppiah s/o Govindasamy* [1991] 1 CLJ 429. In that case the claim was for the return of goods under s. 154 of the Act and not for damages for trespass or wrongful attachment. The case centered on the interpretation of "the owners of the holdings for the time being" in s. 146 and the issue of who was liable to pay under s. 160. In that case s. 148 was not considered at all. In the instant case the claim is based on trespass. What is to be considered is whether or not the defendant had the power to seize the plaintiff's goods.

As we have said earlier, there was compliance with the provisions of s. 148 by the defendant. The seizure was not unlawful. Therefore, there could not be any trespass.

We therefore dismissed the appeal.